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May 12, 2009

Hon. Chairman and Members of the Governing Board of the
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Re: SFWMD/USSC Land Transaction

Dear Governing Board Members,

New Hope Sugar Company and Okeelanta Corporation (together "New Hope") provide the following comments on the proposed acquisition of certain landholdings of United States Sugar Corporation (USSC), Item No. 8, on the May 13, 2009, Governing Board Workshop Agenda (the "USSC Acquisition"). We are submitting our comments in writing because of the Board's three minute limitation on public comments.

As with the prior proposal, the latest proposed USSC Acquisition violates state constitutional and statutory law by failing to submit the entire proposal to the voters for a referendum. There is no precedent in Florida which permits a non-elected board, with no voter input, to authorize the expenditure of hundreds of millions of dollars for the acquisition of land with no definitive plan for improvement of the land, nor any showing of financial ability to implement the projects needed to put the land to the supposed public use. You as public officials have a fiduciary obligation to follow the law and blind adherence to the instructions of the executive provides no protection nor justification for what is being proposed.



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In addition, there are many projects that have been planned, and for which bond money has been secured, that necessarily will be cancelled or delayed to make this purchase. There is no legal basis to ignore representations that have been made to the public and made to purchasers of prior COPs. The Governing Board should also keep in mind that all of the negative impact of bypassing the constitutional requirements of voter approval will fall upon itself and upon the District that it governs.

New Hope also remains concerned that – as with its previous incarnations -- the USSC Acquisition will delay critically needed projects in the District's Long-Term Plan for Everglades restoration. This concern is even more prevalent now, given the budgetary constraints affecting the District. New Hope has substantial investments in the Everglades Agricultural Area. It is critical to those interests that Everglades restoration is successfully implemented, and that the District is able to maintain and fulfill compliance with regulatory requirements applicable to Lake Okeechobee and the Everglades Protection Area. The USSC Acquisition continues to present a purposeless diversion from restoration, whereby new land holdings are acquired for which the District has no set plans, based on concepts that the District has shown no financial ability to implement. Absent billions in additional funding, those lands will remain in the control of the seller, all at the expense of planned restoration projects.¹

To date the Governing Board has not been presented any analysis of the construction cost of projects to be built on the USSC land or on land "swapped" for that of USSC. According to comments by District counsel before the Court in the Bond Validation litigation,² however, the District intends to proceed under the same Summary of Benefits report presented by Staff in 2008, which presumes construction of approximately one-million acre feet of reservoirs and associated STA treatment.

A project along this scale would cost \$5 to \$9 billion dollars to build, yet no estimate of this cost has ever been presented to this Board. Nor has the Board ever been presented any basis to conclude that it could finance the construction cost of any such project on the USSC land. To provide this information, we attach the following for your consideration:

1. Engineering Cost Estimate produced by Galen Miller: Mr. Miller, one of the most experienced and respected authorities on Everglades restoration projects, produced a detailed estimate of the engineering and construction costs of the proposed project configurations used by the District to justify its purchase of the USSC lands. This estimate, presented to the Water Resources Advisory Committee (WRAC) in February, showed that the total project cost of an 800,000 to 1.2 million acre-foot system of reservoirs and associated treatment would be between \$5.3 and \$8.4 billion in today's dollars.³ This would be in addition to the land

¹ The impact of this is further discussed in the attached testimony of Col. Terry Rice.

² *South Florida Water Management District v. State of Florida, et. al.*, Fifteenth Judicial Circuit Case No. 50-2008-CA-031975XXXXMB.

³ It could be 10 years or more before the District even has all the land for its conceptual use of the USSC property, and thus the engineering costs can be expected to escalate substantially for inflation.

acquisition costs and exclusive of operation and maintenance (O&M) costs of the reservoir system. To date, this is the *only* engineering cost estimate that has been produced relating to the River of Grass concept presented by the District. Nothing has been presented to the Governing Board indicating where these funds would come from or when a project along this scale (which remains the justification for the purchase) could be implemented.

2. Expert Opinions of Dr. Bartley Hildreth: Dr. Hildreth, a national authority on municipal finance, undertook an extensive analysis of the District's finances to determine whether the District could complete the USSC purchase, construct projects on those lands and meet its existing Long-Term Plan commitments. All of this used the District's own December 2008 revenue and cost estimates.⁴ The Analysis shows that the land acquisition alone would be financially crippling and that there is no revenue available from any identified source for the billions in additional dollars needed to create actual projects on the land.

3. Bond Validation Trial Testimony of Dr. Bartley Hildreth: Dr. Hildreth walked through his opinions in Court testimony presented in March. He explained that using conservative estimates, an affordability analysis of the District's revenues and other financial commitments shows that there is no financial ability to undertake the full land acquisition and implement projects along the lines the District has proffered.

4. Trial Testimony of Paul Dumars: Mr. Dumars was asked several questions regarding the financial feasibility of the infrastructure project that would be the basis for the acquisition. His testimony demonstrates that there is no financial ability to implement the \$4.5 billion dollar plus project that this is the supposed basis for the USSC acquisition. Such a project if debt-funded would require debt service of over \$300 million per year.

5. Trial testimony of Doug Bergstrom: Like Mr. Dumars, Mr. Bergstrom explained that the District has no funding source for implementing the project infrastructure necessary to make public use of the USSC land in the configurations proffered by the District. No analysis of the cost of such a project, much less its financial feasibility, has ever been produced. As Mr. Bergstrom testified, and as is obvious, it is impossible to undertake a determination of financial feasibility without cost estimates – information that has never been provided to the Governing Board.

6. Trial Testimony of Col. Terry Rice: The consequence of the purchase, as explained in the testimony of Dumars and Bergstrom is that the District further constrains its finances, so as to purchase land that it has no financial ability to utilize. Col. Rice explained the consequences of that delay on everglades restoration showing that the purchase will substantially harm restoration efforts by delaying current projects in favor of speculative future replacements. Col. Rice also reviewed the engineering cost estimate of Mr. Miller and configurations proposed by the District and testified that the total construction cost could exceed \$9 billion.

⁴ After Dr. Hildreth and his team completed this analysis, the District issued new revenue estimates showing that for at least the next several years revenues would, in fact, be far worse than the earlier estimates used by Dr. Hildreth.

All of this demonstrates that the land acquisition -- whether all at once, or for part now and part later -- does not serve the stated purpose of providing large-scale water storage, nor aids Everglades restoration. The District has simply not shown any ability to undertake the projects it claims would provide the benefits that are the stated reason for the USSC Acquisition.

Additionally, nine alternative configurations have been developed in the project planning process before the Water Resources Advisory Committee (WRAC). These likewise look to development of large scale storage and treatment, generally with no consideration of construction costs and with no correlation to the lands being purchased. There is also no analysis explaining how the District would fund construction of any of the various project configurations that have been discussed. It is also worth noting that the vast majority of these configurations do not make use of the citrus land that comprises nearly half of the present USSC Acquisition.

While several possible configurations have been floated about, simply saying that something would be a good idea is, respectfully, insufficient to show a public purpose, particularly when there is no analysis of whether that concept can be made into reality within some reasonable time period. Absent a defined complete project (*i.e.*, land *and* infrastructure *and* O&M funding), and a timeline for financing and completing that project, there is insufficient information to move forward with the acquisition.

Given the current state of the District's finances, a full cost analysis would show no ability to consummate the second-phase purchase of 107,000 acres, much less complete the projects that are the supposed purpose for the USSC Acquisition. The proposed Agreement with USSC takes advantage of this, and is specifically written to limit the District's right to actually use the land it is purchasing unless it can raise the funds to buy the remaining USSC option lands. All the while USSC is guaranteed long-term control of the land it "sold" to the state, for a small fraction of the public debt cost.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Klock', with a stylized flourish at the end.

Joseph P. Klock